IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4662 OF 2006

1. Mr.Prafulla C. Dave, Hindu, Adult, R/at "Prarambh" Hou. Soc. 135/4, Erandawana, Pune-411 004.

2. Mrs. Urvashi P.Dave, Hindu, Adult, R/at "Prarambh" Hou. Soc. 135/4, Erandawana, Pune-411 004.

3. Mrs. Bhikubai M. Gothi, Hindu, Adult, R/at Kothi Bazar, At & post Betul, Madhya Pradesh.

4. Mr.Shirish M.Gothi, Hindu, Adult, R/at Betul, Madhya Pradesh.

5. Mrs.Trupti K.Kamble, Hindu, Adult, R/at "Prarambh" Hou. Soc. 135/4, Erandawana, Pune-411 004.

6. Mr.Kirti H. Kamble, Hindu, Adult, R/at "Prarambh" Hou. Soc. 135/4, Erandawana, Pune-411 004.

7. Mrs.Sunita D. Shah, Hindu, Adult, Nana Peth, Pune - 411 002.

8. Mr.Deepak S.Shah, Hindu, Adult, Nana Peth, Pune - 411 002.

9. Mr.Ravindra S.Shah, Hindu, Adult, R/at 125, Nana Peth, Pune-411 002.

10. Mr.Deepak S.Shah, Hindu, Adult, R/at 217 Nana Peth, Pune-411 002.

11. Mr.Shashikant M.Shah, Hindu, Adult, R/at 6/996, Maharshi Nagar, Laxmi Narayan Apartment, Zanjle Baug, Pune - 411 037.

12. Mr.Vikram Shah, Hindu, Adult, R/at 6/996, Maharshi Nagar, Laxmi Narayan Apartment, Zanjle Baug, Pune - 411 037.

13. Mr.Bipin K.Shah, Hindu, Adult, R/

at C.D.S.S. Colony (Behind))
Pandurang Colony, Karve Road,)
Pune - 411 038.)
)
14. Mr.Sanjay S. Shah, Hindu, Adult,)
R/at Amrachhaya, Mitra Malnal)
Colony, Pune - 411 009.)
)
15. Smt.Shamaben S.Shah Hindu, Adult,)
R/at Amrachhaya, Mitra Malnal)
Colony, Pune - 411 009.)
)
16. Mr.Shantanu R.Dekhane, Hindu,)
Adult, R/at 127, Somawar Peth,)
Pune - 411 011.)
)
17. Mr.Ramesh Kapoor, Hindu, Adult,)
R/at N.D.A. Campus, Khadkwasla,)
Pune - 411 023.)
)
18. Smt. Raj Kapoor, Hindu, Adult,)
R/at N.D.A. Campus, Khadkwasla,)
Pune - 411 023.)
)
Through Power of Attorney holder)
Shri Dhananjay Saokar for)
petitioner Nos.14 to 18.)..Petitioners.

V/s.

1. The Municipal Commissioner,)
Pune Municipal Corporation,)
Shivajinagar, Pune.)
)
2. The Director, Town Planning,)
Government of Maharashtra,)
Central Building, Pune.)
)
3. State of Maharashtra)
)
4. Mr.Rajesh Kothari, Hindu, Adult,)
R/at A-4, Anu, Apartment, Sub-)
Way Road, Santacruz (West),)
Mumbai - 400 054.)
)
5. Mrs.Indumati R. Kothari, Hindu,)
Adult, R/at A-4, Anu, Apartment,)
Sub-Way Road, Santacruz (West),)
Mumbai - 400 054.)..Respondents.

Mr.Virag V.Tulzapurkar, Senior Advocate with V.B. Naik for petitioners.

Mr.V.G. Mujumdar for respondent No.1.

Mrs.M.P.Thakur, A.P.P. for respondent Nos.2 & 3.

CORAM : F.I.REBELLO AND R.M.SAVANT, JJ.

JUDGMENT RESERVED ON : 22ND MARCH, 2007.

JUDGMENT PRONOUNCED ON : 20TH SEPTEMBER, 2007.

JUDGMENT (PER F.I. REBELLO, J.)

1. Rule. Heard forthwith.

2. The subject matter is land identified under Survey No.125A/4B/2, admeasuring about 83 Ares, situated at village Aundh, Dist. Pune. The land had been kept under reservation for the public purpose of a garden in the development plan of Pune notified on 8th July, 1966. The said reservation for garden purpose was continued as per new revised Development Plan dated 5th January, 1987, draft plan of which was published in 1982. The petitioners had purchased the land from the original owners Wakde and others in the year 1989. The Pune Municipal Corporation it is stated had taken no steps for acquisition of the said land within the period of 10 years from the year 1966. The present petitioners filed a Writ Petition No.5467 of 1989 on 29th August, 1989 for deletion and / or de-reservation

of the said land from the designated public purpose i.e. garden. After filing of the petition under legal advice, the petitioners served the purchase notice dated 5th October, 1989 under section 56 read with section 127 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as 'M.R.T.P. Act') with the Pune Municipal Corporation calling upon them to acquire the said land in question within a period of 6 months from the receipt of the notice. The purchase notice was received by the Pune Municipal Corporation on 3rd November, 1989 and also served on the City Engineer on 16/10/1989 and Assistant Engineer, Development Plan Department on 18/10/1989. As the Pune Municipal Corporation did not take any action on the aforesaid purchase notice, they submitted the lay-out plan to Pune Municipal Corporation on 5th October, 1990. The lay-out plan was however rejected by the Pune Municipal Corporation by letter dated 29th October, 1990 on the footing that no purchase notice was received by them and requested the petitioner for proof of the original copy. It is the petitioners case that on 3rd November, 1990 the petitioner submitted the letter along with original proof copy duly acknowledged by the City Engineer office and Commissioner of Pune Municipal Corporation. Once again, on 13th December, 1990 the Pune Municipal Corporation wrote to the

petitioners' Architect and refused permission on the ground that the petitioners had not shown the original receipt of having served the purchase notice and as such the purchase notice was not served on the Corporation. It was also informed that the said land was reserved as per the 1987 development plan for garden purpose and, therefore, the lay-out plan could not be sanctioned.

3. The petitioners aggrieved by the said decision of the Corporation filed an Appeal under section 47 of the M.R.T.P. Act before the Urban Development Minister on 29th January, 1991. The petitioners also moved a Civil Application No.459 of 1995 for carrying out certain amendment in the Writ Petition No.5467 of 1989. The said Writ Petition No. 5467 of 1989 was dismissed for default by an order dated 12th October, 1999 and application was moved for restoration, which was allowed by order dated 10th December, 1999. As the appeal was pending, the Writ Petition was disposed of with a direction that the appeal should he disposed of expeditiously within 3 months. The appeal came to be dismissed by an order dated 14th July. 2003 on the ground of premature notice under section 127 of the M.R.T.P. Act as it was given by the petitioner before the completion of period

of 10 years from the date of revised development plan i.e. 1987 Development Plan. In these circumstances, the present petition.

4. A reply has been filed on behalf of the respondent No.1. It is set out that the contention of the petitioners that they had given a purchase notice dated 5/10/1989 under section 127 of the M.R.T.P. Act is not borne out from the records of the Corporation and as such the contention that the reservation has lapsed is not tenable. The revised development plan it is stated came into force in the year 1987 in which the said property is shown as reserved for public garden. Notice, assuming it to have been served, is within 2 years of the revised development plan. This is not in accordance with the provisions of section 127 of the M.R.T.P. Act. When the alleged purchase notice was served, Writ Petition No.5469 of 1989 was pending and as such, the notice is not legal. It is then pointed out that the draft development plan was published in 1982. The owners did not take any objection to the reservation. The petitioners purchased the land in 1989 after the plan was notified in 1987. The Standing Committee of the Pune Municipal Corporation passed a Resolution No.219 on 30/5/1991 resolving to acquire the said property. Steps for acquisition for the public

purpose of garden and proposal for acquisition has been sent to the Collector, Pune by letter dated 16/3/1992. Further proceedings for acquisition are being carried out by the Special Land Acquisition No.15, Pune. The purchase notice it is pointed out was not served on the respondent No.1 as per the provisions of section 127 of the M.R.T.P. Act and as the proceedings for acquisition of the said property had commenced, the lay out proposal was rightly rejected by order dated 29/10/1990.

5. On behalf of the petitioners, learned counsel contends that the question which arises for consideration is, "Whether the respondent No.1 is right in holding that the petitioners' purchase notice dated 5th October, 1989 under section 127 of the M.R.T.P. Act is premature, because the revised development plan for Pune was published on 5th January, 1987 and, therefore, the notice being within two years from the date, is premature."

6. In support of the contentions, it is submitted that the publication of the revised development plan will not in any manner change the original development plan of 1966 as all that has happened in 1987 is that the development plan of 1966

has been revised under section 38 of the M.R.T.P. Act. This does not, therefore, constitute a new plan so as to alter the date of final development plan. It is submitted that a reading of the said section itself makes this position abundantly clear If the argument of the respondents has to be accepted, then, it virtually means that the right of an owner to receive compensation and / or to have a declaration that the reservation has lapsed can perpetually be defeated which is certainly not the intention of the legislature. It is submitted that section 26(2) (2) (iv) of the M.R.T.P. Act speaks about preparation and publication of draft plan and in particular a report of the stages of development by which it proposed to meet any obligation imposed on the planning authority by the draft development plan. Section 22 (b) and (c) of the M.R.T.P. Act indicates the manner in which the use of land in the area of the planning authority is to be regulated and further the manner in which the development of the land is to be carried out. Section 31(5), it is submitted, pertains to the sanction of the draft development plan and in particular prescribes that if a development plan contains any proposal for designation of any land for the purposes specified in clauses (b) and (c) of section 22 and if such land does not vest in the planning authority the State Government

shall not include that purpose in the development plan, unless it is satisfied that the planning authority will be able to acquire such land by private agreement or compulsory acquisition not later than 10 years from the date on which the development plan comes into operation. In the instant case, the development plan as prepared in 1964 and published in 1966, shows the area to be reserved for garden purpose. The same reservation is merely continued in the year 1987 under a revised development plan. Even as of date, there is no acquisition of the land. Therefore, virtually for a period of 40 years the planning authority has been unable to acquire the land for the reserved purposes. Section 38 prescribes revision of development plan and by amendment of 1994 the period of 10 years has been substituted by a period of 20 years. In the present case, it is submitted that once in 20 years from the date on which a development plan has come into operation and where a development plan has been sanctioned in parts, then atleast once in 20 years from the date on which the last part has come into operation a planning authority may revise the development plan either wholly or in parts, after carrying out, if necessary a fresh survey and preparing an existing land use map of the area. In the present case, although the development has been revised and published in 1987 the

fact that the reservation is continued clearly indicates that the revision of the development plan has been in parts. Therefore, so far as the reserved area is concerned, the relevant date for the purposes of calculating the statutory period under section 127 of the M.R.T.P. Act has to be that of the plan of 1966. It is, therefore, submitted that the spirit of the provisions is not to deprive the land owner from the beneficial use of his land, but at the same time to maintain the pressure on the planning authority to acquire the land within 10 years, failing which to permit the owner to serve purchase notice. It is submitted that the fundamental point which requires to be answered is whether a revised development plan is a fresh plan or only a periodical revision of the original development plan. Since many provisions of the original development plan get implemented and since others remain unimplemented as also certain additional requirements are necessary for a growing city revisionary exercise needs to be periodically undertaken. It is submitted that this cannot be a replacement of the final development plan and can only be a revision thereof. Section 127, therefore, contemplates 10 years from the commencement of the final development plan and not the revised development plan which could have been clearly specified if so

intended.

7. From the contention urged the relevant question that we are called upon to answer is, Whether, the plan first prepared and notified under section 21 of the M.R.T.P. Act, is the final development plan and the plan prepared under section 38 is only a revision of the final development plan proposed under section 21 of the M.R.T.P. Act and as such, the notice contemplated under section 127 (2) of the M.R.T.P. Act and the period prescribed is from the publication of the development plan first notified under section 21 and not the revised development plan under section 38.

For answering the issue, we have to look at section 21 of the Act. Section 21 defines development plan as under :-

> " Development Plan - means the plan for development and / or development of the area within the jurisdiction of the planning authority and including revision of the development plan and proposal of Special Planning authority for development of the land within its jurisdiction. "

(emphasis supplied)

A development plan, therefore, includes revision of a development plan.

After following the prescribed procedure, including considering of the bonafide objections to the draft plan which is prepared in terms of section 21 on receiving sanction under section 31 under sub- section (6), the development plan notified is called the final development plan and subject to the provisions of the Act is binding on the planning authority. During the lifetime of the development plan, it is open to the planning authority or the State Government to carry out modification in the final development plan to the extent it will not change the character of such development plan.

8. The development plan as first finalised normally has to be revised only after a life span of 10 years which by the Maharashtra amendment 13 of 1994 has now been made 20 years. That period has to be counted from the date on which the development plan has come into operation. If the plan is sanctioned in parts, then from the date on which the last part has come into operation. A duty is cast on the planning authority to

revise the development plan in terms of section 38. The planning authority may revise development plan either wholly or the parts separately after carrying out a fresh survey and preparing a plan of the area within its jurisdiction and the provisions set out therein, so far as that can be made applicable in respect of such revision of the development plan. One of the requirements is section 22. Section 22 sets out the contents of development plan. Section 31 has also to be considered while preparing the revised development plan. Section 127 uses the expression final development plan. The question is whether the expression final development plan means only the plan as first notified under section 31 or also includes the revised development plan which has been notified. It must be born in mind that while revising a development plant, the provision of section 31(6) are also applicable, as such the revised development plan on the State Government fixing the date for notification also becomes the final development plan.

. Section 31(6) reads as under:-

> " A Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the

provisions of this Act, be binding on the Planning Authority. "

9. We may now examine the citations relied upon to find out whether the contentions urged on behalf of the petitioners is supported by those Judgments. The learned counsel relied upon a unreported Judgment of this Court in the case of Narayan Haribhau Tamane & Ors. V/s. The State of Maharashtra & Ors. in Writ Petition No.3642 of 1988 decided on 6th November, 1989. In that case, the issue was also in respect of the development plan notified on 15/8/1966 for the planning area of Pune Municipal Corporation. The petitioners there served a notice and the six months period expired on 27/7/1979. It was contended by the petitioners that the reservation had lapsed and the petitioners were entitled to develop the land on their own. It was contended on behalf of the Corporation that the land was originally reserved for a garden. A fresh reservation for hospital was made in the plan sanctioned by the Government in the year 1982 and as such the period of ten years has not lapsed. It was also contended that steps were taken for acquisition of the land as contemplated by section 126 and 127 of the M.R.T.P. Act. Reliance was placed on the Government Notification dated 5/1/1987. The Court noted that

there was no plan sanctioned for the first time in the year 1982, but certain modifications were considered and proposals were sent in the year 1982 for reservation and also certain modifications in the plan. The Court observed that does not mean that the plan itself had come in existence in 1982. The Court noted, that what was done by the draft plan as suggested in the year 1982 and approved thereafter, is that the original plan sanctioned by the Government in 1966 came to be modified. It was sought to be contended relying on this Judgment that this Court has taken a view that the plan as prepared under section 38 cannot be considered to be a final development plan, but is only a revised plan and what is to be considered is the plan which was notified under section 29(6). It is not possible to accept the said contention. From the facts, what is clear is that before the proposal of 1982, a notice had already been sent and the period for the planning authority to take action had come to an end on 27/7/1979. In other words, before the draft revised plan was notified the reservation had lapsed pursuance to the notice under section 127. The original reservation was for a hospital and under the draft plan of 1982, the reservation of hospital was sought to be continued. The issue as canvassed before us was not at all issue. In our opinion, therefore,

the Judgment in Narayan Haribhau Tamane (supra) will not support the submission as contended on behalf of the petitioners herein.

10. Our attention was next invited to the Judgment in the case of **Prakash Rewadmal Gupta V/s. Lonavala Municipal Council & Ors.** reported in **2002(1) All MR 993**. One of the contentions urged was that the reservation had lapsed as no steps were taken after receipt of notice under section 127 of the Act by the Planning Authority. The learned Bench did not accept the said contentions. The Court noted that the lapsing of the reservation in respect of a final development plan under section 127 cannot preclude the authorities from determining, while the plan is revised in pursuance of the independent statutory power conferred by section 38 as to whether the public purpose continues to subsists or whether the land ought to be reserved in the revised plan for the same or any other public purpose. A learned Division Bench of this Court in Robbert Joseph Castellino V/s. State of Maharashtra in Writ Petition No.3664 of 1989 decided on 15/9/1994 was considering the case where a notice was served under section 127 by the owners on the Municipal Corporation on 21st March, 1988. The case of the Corporation was that they had passed a resolution on

13th September, 1988 that is before the expiry of six months recommending the acquisition of the lands and it was forwarded to the Collector on 16th September, 1988. In the meantime, on 30th April, 1988 a fresh draft development plan was published inviting objections. The Division Bench held that though the Corporation had taken steps for the acquisition of the land within a period of six months of the service of the notice under section 127, it was not open to the State Government to wait for a period of 6 years thereafter to issue to issue a notification under section 6 of the Land Acquisition Act and in these circumstances, the petitioners would have been entitled to relief of the declaration that the reservation had lapsed but for what had transpired during the pendency of the petition which was the publication of the draft development plan and the final development plan which was sanctioned on 12th November, 1992. In so far as the issue of lapsing is concerned, the Court held that even though the period of 10 years had lapsed after the publication of the final development plan, in the draft revised plan, the reservation continued to subsist and as such the issuance of notice under section 127 will not have the effect of obliterating the reservation of the land under the revised draft development plan.

11. In **Bhavnagar University V/s. Palitna Sugar Mill Pvt. Ltd. & Ors.** reported in **A.I.R. 2003 Supreme Court, 511** the question which arose for consideration was whether by reason of inaction on the part of the State and its authorities under the Town Planning Act to acquire the lands for a period of more than 10 years, in terms of the provisions of Land Acquisition Act, 1894 despite service of notice, the same stood dereserved / de-designated in view of issuance of draft revised plan under section 21 thereof or the term of 10 years stood extended ? The Supreme Court was pleased to hold that after the period of 10 years as required under the Gujarat Act had expired and if the land had not been acquired in the manner contemplated merely because the draft revised plan was issued would not automatically extend the period of reservation. Considering section 21 of the Gujarat Act, the Court held that section 21 of the Act, in their opinion, does not and cannot mean that the substantive right conferred upon the owner of the land or the person interested therein shall be taken away and it is not and cannot be the intention of the Legislature that which is given by one hand should be taken away by the other. This was in the context that the planning authority was bound to revise the plan on the expiry of ten years from the notification of the

sanctioned draft plan and the notice to acquire could ordinarily be given and on the expiry of ten years from the notification of the sanctioned plan. In other words, the owners would have no opportunity of serving the notice if in the draft revised plan a further extention of reservation was provided for. This Judgment does not answer the issue which has been raised by the petitioners herein.

12. Reliance was also placed on the Judgment in the case of **Baburao Dhondiba Salokhe V/s. Kolhapur Municipal Corporation, Kolhapur & Anr.** reported in **2003 (3) Mh. L.J. 820**. In that case, a notice was served on the expiry of 10 years on 8/8/1991. No steps were taken as contemplated by section 126 or 127 after notice was served. On 28th January, 1992 the Corporation made an application to the Collector, Kolhapur. In 1992 a second draft development plan was published and the petitioner's land was proposed to be reserved for public purposes of children play - ground and housing for dishoused. Earlier, the land had been reserved for garden and 18 mtrs. wide D.P. Road. The acquisition of 18 mtrs. wide D.P. road had taken place and an award order has been passed. The petitioner on the ground that no steps had been taken within the period of 6 months submitted an application

for lay out plan, for development. That was rejected on the ground of the draft development plan. The learned Bench, relying on the Judgment in the case of Bhavnagar University held that the draft development plan would not take away the vested rights of the petitioner. This Court held that the imposition of a statutory obligation under section 38 on the part of the State or the appropriate authority to revise the development plan, the rights of the owners accrued in terms of section 127 cannot be taken away. This again is not an authority for the preposition being canvassed on behalf of the petitioners herein.

13. The next Judgment cited is in the case of **Ranjan Manubhai Doctor & Ors. V/s. State of Maharashtra & Ors.** reported in **2005 (1) Mh.L.J. 718**. The land in the original final development plan was reserved for a public purpose. The petitioner did not apply under section 127. In the meantime, a draft revised plan was notified and ultimately the draft revised plan was notified as a sanctioned plan. The notice was served on 28th March, 1989 after a period of 22 years when the revised plan was in the offing under section 38 of the M.R.T.P. Act The petitioners had filed objections and in the sanctioned development plan which has been notified only a part of the land was

notified for the purpose of recreational ground. This Court held that the reservation lapsed and the petitioner had not challenged the notification of the revised sanctioned plan.

In **Kishor Gopalrao Bapat & Ors. V/s. State of Maharashtra & Anr.** reported in **2005 (4) Mh.L.J. 466**, the learned Bench followed the Judgment of Baburao Dhondiba Salokhe (supra).

14. We may at this stage mention that our attention was also invited to the Judgment in the case of **Municipal Corporation of Greater Bombay V/s. Hakimwadi Tenants Association & Ors.** reported in **1988 Mh.L.J. (S.C.)** and **K.L. Gupta V/s. Bombay Municipal Corporation** reported in **1968 S.C. 303**. In both these Judgments the issue which has been raised before us was not in issue.

15. In none of the Judgments cited was the issue or the contention urged before us, directly in issue nor have any of the Judgment cited before us has answered that issue.

16. If the petitioners arguments are to be accepted, it would mean that once a land was reserved

and a plan notified under section 21, even if the owners took no steps under section 127 or section 49 and thereafter there is a revised plan notified under section 38, either having the same reservation or a different reservation, for the purpose of section 127, the period of serving the notice would commence not from the notification of the revised development plan, but from the issuance of the final notification under section 29(6) of the M.R.T.P. Act of the first plan. As we have already noted while preparing the plan under section 38 the provisions of section 31 are also made applicable as also section 29.

Therefore, whether it has been initiated under section 21 or the revision initiated under section 38, by virtue of sub-section (6) of section 31, the plan as finally notified is a final development plan. The expression ‘final development plan’ in section 127 has to be read in that context. If not so read, it would lead to defeating the scheme of the Act.

17. The owners may take no steps to get the land deserved if not acquired during the life time of the plan as notified. At the time the new plan was under consideration, the planning authority finding the land not developed and considering what is contained in

section 22 finds that a public purpose subsists or land is required for some other public purpose continues the reservation or provides for a different reservation to serve public purpose after hearing the objections filed or not taken by the land owner. The planning authority, development authority or appropriate authority as the case may be would have no time to take steps to acquire the land if the period to be counted is not the date of notification of the revised development plan but the plan as first notified after the Act came into force. The time cannot be read from the point of nature of reservation whether continued or not. What happens if the reservation is different or the reservation is for a different authority as specified in section 127, will the notice commence from the date of the first notified plan or the subsequent revised plan. A section cannot be read differently in the absence of express or implied language. It will have to be given one harmonious construction. In this context, we may reproduce the observation of the Supreme Court in K.L.Gupta (supra). This is what the Supreme Court observed and we quote from para 35:-

> "...No one can be heard to say that the local authority after making up its mind to acquire land for a public purpose must do so within as short a period of time as possible. It would not be reasonable to place such a restriction on the power of the local

> authority which is out to create better living conditions for millions of people in a vast area. The finances of a local authority are not unlimited nor have they the power to execute all schemes of proper utilisation of land set apart for public purposes as expeditiously as one would like. They can only do this by proceeding with their scheme gradually, by improving portions of the area at a time, obtaining money from persons whose lands had been improved and augmenting the same with their own resources so as to be able to take up the improvement work with regard to another area marked out for development. The period of ten years fixed at first cannot therefore be taken to be the ultimate length of time within which they had to complete their work. The legislature fixed upon this period as being reasonable one in the circumstance obtaining at the time when the statute was enacted. We cannot further overlook the fact that modifications to the final development plan were not beyond the range of possibility. We cannot therefore hold that the limit of time fixed under section 4 read with section 11 (3) forms an unreasonable restriction on the rights of a person to hold his property. "

18. Legislature advisably has chosen to provide a time limit within which the steps have to be taken for acquisition. The same cannot be defeated by reading the plan notified under section 38 as not a final development plan. We are of the opinion that the plan notified under section 38 is also a final development plan as all the procedure for preparation and notification have to be taken de novo. The period, therefore, under section 127 would commence from the date of the notification of the revised plan prepared under section 38 and as notified under section 31 (6).

Considering the above, the notice is premature.

19. Consequently, we do not find any merit in the petition. Rule discharged. There shall be no order as to costs.

(F.I.REBELL0, J.)

(R.M.SAVANT, J.)